IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JARED MORRIS,	:	
	:	**C.A. NO: 08C-06-030 (RBY)**
Plaintiff,	:	
	:	
v.	:	
	:	
THETA VEST, INC., a Delaware corporation, and ANGOLA COMMUNITY PARTNERS, LLC,	:	
	:	
Defendants.	:	

Submitted: February 20, 2009
Decided: March 10, 2009

Upon Consideration of Defendants' Motion for Summary Judgment
GRANTED

OPINION AND ORDER

Craig T. Eliassen, Esq., Schmittinger & Rodriguez, P.A., Dover, Delaware for Plaintiff.

Brian E. Lutness, Esq., Silverman & McDonald, Wilmington, Delaware for Defendants.

Young, J.

Morris v. Theta Vest, Inc., et al.
C.A. No.: 08C-06-030 (RBY)
March 10, 2009

Defendants Theta Vest, Inc. and Angola Community Partners, LLC ("Defendants") move for summary judgment in Plaintiff Jared Morris's ("Plaintiff") negligence action against them, based on Plaintiff's slip and fall on Defendants' premises during the course of a freezing rain or sleet storm. Because the applicable rule provides that a landowner is, as a matter of law, acting reasonably in awaiting the end of a storm before any obligation to clear or make safe any entrance, Defendants' motion is **GRANTED**.

I: FACTS

Defendants are the parties moving for summary judgment. Therefore, the following facts are considered in a light most favorable to Plaintiff.[1] On February 13, 2007, Plaintiff went to Defendants' office to pay rent on the lot he rented from Defendants. It was raining and very cold outside. Upon leaving the office, Plaintiff slipped and fell a few steps outside the main door. It was still precipitating at that time. Various witness' testimony described the precipitation as freezing rain or sleet. Plaintiff's body pitched forward as he fell. Plaintiff landed on his knee. Because of the impact, Plaintiff suffered a shattered patella.

Defendants had a maintenance staff at the time. The maintenance staff was responsible for keeping the premises safe, including clearing any hazards among the walkways of the office's exterior. The walkway where Plaintiff's accident occurred

[1] *Lynch v. Athey Products Corp.*, 505 A.2d 42, 43 (Del. Super. 1985) (citing *Sweetman v. Strescon Indus. Inc.*, 389 A.2d 1319 (Del. Super. 1978).

was treated with salt at approximately 9:00 a.m. that morning. The walkways were not treated again until after Plaintiff's accident, which allegedly occurred at approximately 2:45-3:00 p.m.

II: STANDARD OF REVIEW

Summary judgment is appropriate when there are no issues of material fact, and the moving party is entitled to judgment as a matter of law.[2] The Court must analyze the facts in a light most favorable to the non-moving party.[3] In doing so, any inferences which may be drawn must be drawn in favor of the non-moving party.[4]

Negligence actions generally are not decided in the summary stage of the proceedings.[5] Nonetheless, if Defendants show that, under the uncontroverted facts relative to any duty upon Defendants, Plaintiff cannot establish the elements necessary for negligence, the Court will find in favor of Defendants' motion.[6] The required elements are (1) the presence of a duty owed by Defendants to Plaintiff, (2) a breach of said duty, (3) which breach is the proximate and legal cause of (4) Plaintiff's injury.[7] In Delaware, the duty required in negligence actions such as those

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[2] Super. Ct. Civ. R. 56(c).

[3] *Lynch*, 505 A.2d at 43.

[4] *Sweetman*, 389 A.2d at 1324.

[5] *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962).

[6] *Betts v. Robertshaw Controls Co., 199*2 WL 302288 at *3 (Del. Super.).

[7] *Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 828 (Del. 1995).

sub judice is to act with reasonable care as would a person in such circumstances.[8]

III: DISCUSSION

Plaintiff claims that the evidence supporting the liability of Defendants is, at least, sufficient to clear the summary judgment barrier in a negligence case for three distinct reasons.

Fist, Plaintiff asserts that the landowner has a continuing obligation to take reasonable precautions to have its property reasonably safe for the use by invitees. As a general principle of common law, that is correct. However, this case, as earlier described, arose out of a fall on a surface belonging to Defendant, which was allegedly slick because of weather conditions. That frozen rain or sleet condition had begun well before Plaintiff entered Defendant's premises. Significantly, all agree that it was on-going when Plaintiff's event occurred.

Accordingly, Defendant cites *Young v. Saroukis,* 185 A. 2d 274, 282 (Del. Super. 1962), for the proposition that:

> The authorities are in substantial accord in support of the rule that a business establishment..., in the absence of unusual circumstances, is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance.

The storm in this case not having ended, there would appear to be no issue of material fact relative to a determination of summary judgment in favor of Defendants

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[8] *Woods v. Prices Corner Shopping Center Merchants Association*, 541 A. 2d 574, 578 (Del. 1988).

herein, based upon the well-established holding *Young*, supra; followed by *Woods v. Prices Corner Shopping Center etc.,* which specifically extended the concept to business invitation relationships, and *Monroe Park Apts., Corp. v. Bennett*, 232 A. 2d 105 (Del. 1967).

Plaintiff, however claims that "unusual circumstances" do exist in this case. That position is based on what Plaintiff perceives as compulsion created by Defendant's drawing Plaintiff to the condition. The factual basis for that position is that Defendant "had called" Plaintiff relative to a need to come to Defendants' place of business to pay rent. However vague or specific, subtle or forceful that call might have been or might have been perceived, we look again at *Young*, supra. In that case, the Plaintiff was trying to go to his apartment home during a storm. Any compulsion that might be felt by some needing to pay some rent at some reasonably prompt time would pale in comparison to that felt by a person needing to get home during a storm, particularly (as was the case in *Young*) when only one available entrance for such return existed.

Hence, Plaintiff cannot rely upon any "unusual circumstance" exception to require Defendants to respond to the effects of the storm prior to its cessation.

Finally, though, Plaintiff asserts that, even granting *Young* and progeny, the consideration is not complete. Rather, Plaintiff points out that some 5 or 6 hours earlier in the day, and in a response to the storm, Defendants had salted the area, which effort was rendered ineffective by the continuing storm. Plaintiff's position, then, is that Defendants assumed a duty – whether or not one previously existed – to continue salting or otherwise making the premises safe. The claim, as stated, is that

a jury issue exists, because liability for inadequate performance of an assumed obligation is in effect, due to Defendants' having once started the salting process (citing *Rabar v. E.I. duPont de Nemours and Co., Inc.,* 415 A. 2d 499 (Del. Super. 1980).).

The analogy is not well-drawn. In the case of a continuing storm, reasonable conduct is to await the storm's end. That is true whether successful or vain efforts to take some earlier action occurred. This same issue was addressed precisely in *Kovach v. Brandywine Innkeepers Ltd. P'ship,* 2001 WL 1198944 (Del. Super.). In that case, Judge Babiarz, describing public policy, which would encourage any clearing or other efforts during a storm, held that: "The fact that Brandywine may have removed some snow before the snowfall ended is of no consequence." I find that analysis to be appropriate and accurate.

Therefore, Defendant's Motion for Summary Judgment is **GRANTED.**

SO ORDERED this 10th day of March, 2009.

/s/ Robert B. Young
J.

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